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IN THE

Supreme Court of the United States

No. 977/28 OCTOBER Term 1927

SANITARY REFRIGERATOR CO.,
Petitioner,

v.

ALEXANDER F. WINTERS and
BASIL R. CRAMPTON,
Respondents.

BRIEF FOR PETITIONER

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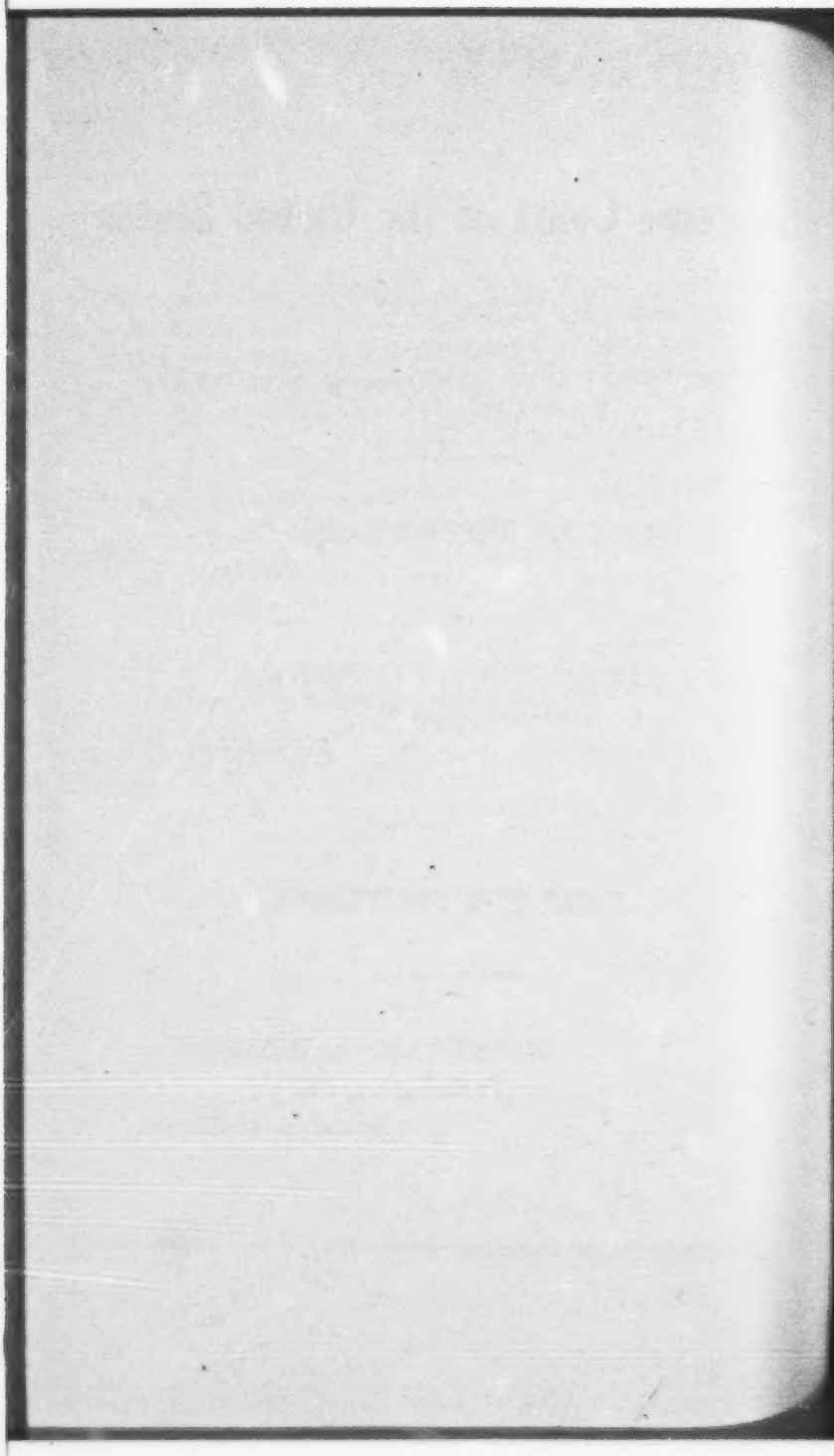

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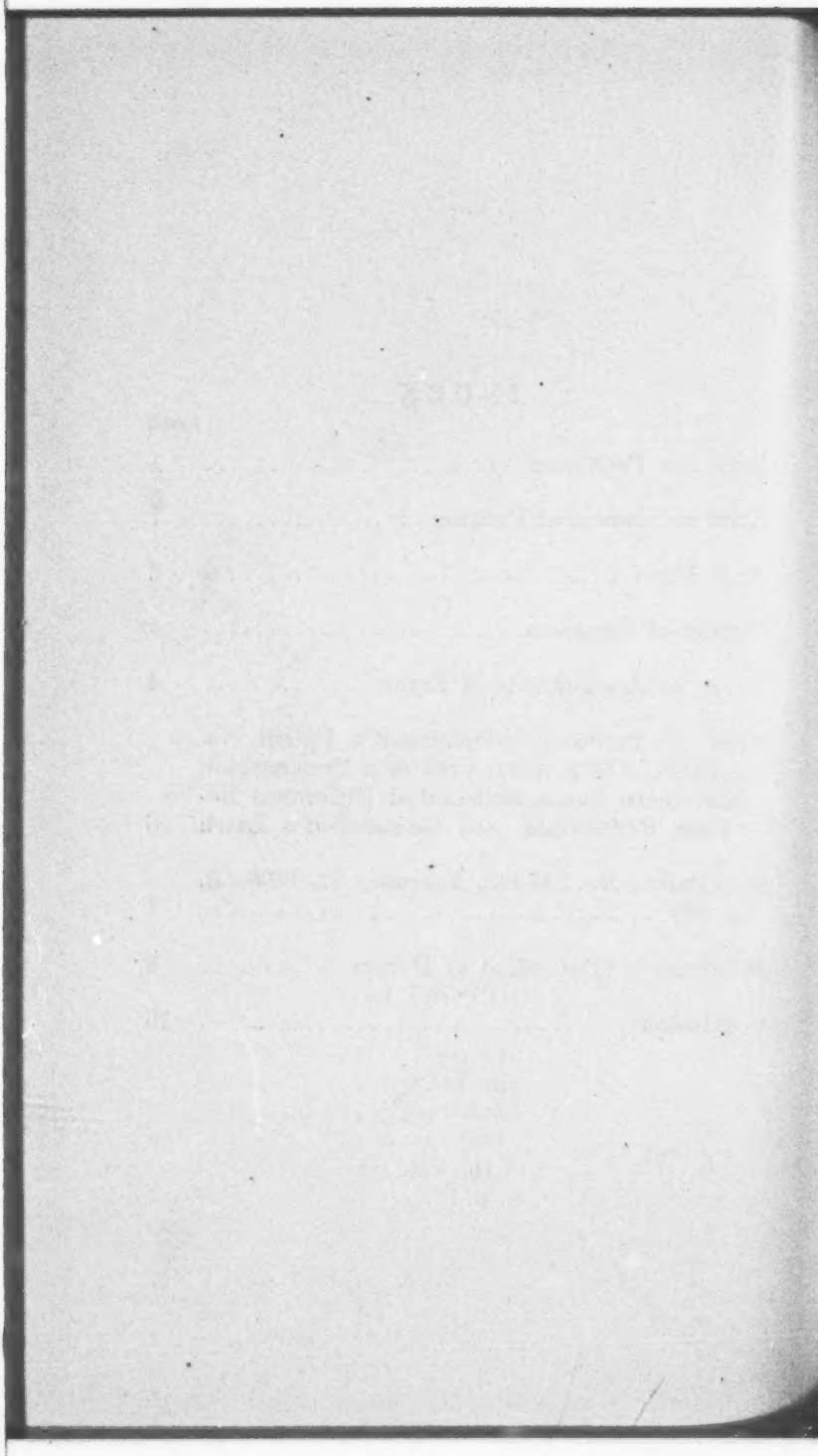

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ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents.

BRIEF FOR PETITIONER.

In the matter of the petition of Sanitary Refrigerator Co. for a writ of certiorari to bring up the case of Sanitary Refrigerator Co., petitioner, v. Winters and Crampton, respondents, for review and determination.

BRIEF IN SUPPORT OF PETITION.

This petition presents a conflict between the decisions of the Circuit Court of Appeals for the 7th Circuit, and the District Court for the Eastern District of Pennsylvania in the Third Circuit (20 Fed. 2nd 671) as to the scope of claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent in suit No. 1,384,102. (R. p. 72.)

MAIN FACTS.

This is a patent case and concerns a latch for refrigerator doors or the like wherein the latch lever automatically locks when the door is slammed. The general construction of these latches is of great antiquity, as they all comprise a keeper having a notch into which the latch lever snaps or locks when the door is closed, the other element of the combination being the latch lever which in the present instance is pivotally mounted on the door. In some cases the latch lever was pivoted to the door jamb or casing and the keeper mounted on the door. It was of equal antiquity to mount the keeper on the door jamb or casing and the latch lever on the door. It was of equal antiquity to mount the latch lever on the door so that when the door was slammed shut the latch lever would automatically close or lock no matter whether it stood vertical or horizontal. In practically all of the prior art patents, the latch lever is kicked or tripped by the keeper just as the door begins to close tightly. The record herein shows from plaintiffs' file wrapper that plaintiffs' (respondents') keeper considered, *per se*, was old, since claim 7 to the keeper (R. p. 50) was rejected on prior patents (R. p. 52) and cancelled. Plaintiffs' claims 5 and 6 drawn to the latch lever, *per se* (R. p. 77), have unanimously been held invalid by the Circuit Court of Appeals for the Seventh Circuit and by Judge Dickinson in his opinion, 20 Fed. 2d 671. In fact, plaintiffs, Winters and Crampton, at the argument in the Court of Appeals practically admitted that claims 5 and 6 of the patent in suit were invalid. The only contribution, if any, that plaintiffs made to the art was to assemble the old keeper and the old latch lever in such a way, that the top arm or pin 12 of plaintiffs' latch lever (R. p. 74) was positioned so that when the lever stood vertical, said pin 12 would ride over the curved surface 18 of the keeper and be tripped. This is the distinguishing feature in plaintiffs' claims 1, 2, 3, 4 and 7 and is in every claim either directly or by implication and it is only by reading this feature of construction or mode of operation

into plaintiffs' claims 1, 2, 3, 4 and 7 that said claims can be saved in view of the Keil Patent No. 554,448. (R. p. 88.)

CONFLICT OF DECISIONS.

As explained in the petition, page five, the Circuit Court of Appeals for the Seventh Circuit has held that Winters and Crampton's claims 1, 2, 3, 4 and 7 (R. pp. 76 and 77) are infringed, while Judge Dickinson, in the District Court for the Eastern District of Pennsylvania in the Third Circuit, has held on the same issue of infringement that these claims are **not infringed** (20 Fed. 2d 671).

We, therefore, humbly submit that if Judges Alschuler, Evans and Page, comprising the Circuit Court of Appeals for the Seventh Circuit, were wrong in their conclusions, as expressed in their opinion at the end of the record, as we believe they were, then the only relief petitioner can have must come from this Court.

If Judge Dickinson was right in his finding of non-infringement, at the bottom of page 672 of 20 Fed. 2d,

> "that the differences in the two devices are only such as to make a difference in special construction. That there is such difference is evidenced by the findings of the Patent Office **in granting a patent to each.** We are here concerned only with plaintiffs' claim of right to a monopoly, and we hold that they have none, except to a latch of their own special construction, and this right our finding is the defendant does not infringe."

then this Court only has the power to effectuate his opinion. But which of these antagonistic decisions the Courts in other Districts will follow no man can tell (*Pelzer v. Newhall*, 93 Fed. 685), and it is because of this uncertainty as to what the legal scope of respondent's claims really is and which of these antagonistic conclusions other Courts may adopt, that this petitioner has now come to this Court.

These various Federal decisions have made the Winters and Crampton patent (R. p. 72), which in point of good law,

is of the same scope throughout the United States and its territories, one kind of a monopoly, in the States comprising the Seventh Circuit and a dissimilar kind of a monopoly in the Eastern District of Pennsylvania and throughout the rest of the United States (except the Seventh Circuit), and it is submitted that this Honorable Court should correct so glaring a diversity of interpretation not only in the interest of your petitioner but also in the interest of the public at large.

AS TO THE ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals for the Seventh Circuit in its decision in *Sanitary Refrigerator Co. v. Winters & Crampton*, speaking with the utmost respect, seems to have misunderstood or misinterpreted the law relating to interpreting the claims of primary and secondary patents, to which latter class the Winters & Crampton patent in suit admittedly belongs, since after correctly stating in various places that said Winters & Crampton patent was a narrow, limited patent restricted to the particular structure disclosed, it wound up by construing the Winters & Crampton claims 1, 2, 3, 4 and 7 as though that patent were a broad, primary, pioneer patent by giving said claims such an undue breadth and scope as to dominate defendant's patented structure (R. p. 156) of which Winters and Crampton manifestly never had the slightest conception.

It is, therefore, believed that the Circuit Court of Appeals for the Seventh Circuit erred in its final holding, in effect, that the Winters and Crampton patent in suit is a pioneer (after accurately stating in various places that it was not), and that its claims (excepting 5 and 6) are entitled to a broad construction dominating defendant's device which is neither disclosed or claimed in the patent in suit, after correctly stating as to said patent, as follows:

> "Claims 1, 2, 3, 4 and 7 'are narrow, specific claims.'
>
> "It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a

prior art loaded with latches possessing some of the features of appellee's latch.

"It follows, therefore, that patentable novelty, if any exists, is restricted to the particular structure disclosed."

"That the claims are narrow and their validity is conceded.

"But it is this narrow field and nothing more which the inventor possessed when he secured his patent."

Judge Evans, in writing for his Court, seems to have to have cast to the winds the familiar rules of law anent the interpretation of primary and secondary patents, which have been developed in numerous cases in the Federal Courts of all grades beginning before the Civil War and continuing down to the present time. The history of the subject can be traced from an early period until now in the following familiar leading cases, with which this Court is so familiar that we shall not quote from them as we have collected them here, not for the purpose of instruction, but so that the Court can conveniently refer to them, if it so desires:

McCormick, v. Talcott, 20 Howard 405, 1857; *Burr v. Duryee,* 1 Wall 531; *Railway Co. v. Sayles,* 97 U. S. 556, 1878; *Morley Machine Co. v. Lancaster,* 129 U. S. 273, 1889; *Pope Mfg. Co. v. Gormully Mfg. Co.,* 144 U. S. 242, 1892; *Sessions v. Romadka,* 145 U. S. 45, 1892; *Knapp v. Morss,* 150 U. S. 230, 1893; *Miller v. Eagle Co.,* 141 U. S. 204, 1894; *Duff v. Pump Co.,* 107 U. S. 639, 1882; *Boyd v. Jamesville Hay Tool Co.,* 158 U. S. 267, 1895; *Dashiell v. Grosvenor,* 162 U. S. 432, 1896; *Westinghouse v. Boyden,* 170 U. S. 537; *Kokomo Fence Machine Co. v. Kitselman,* 189 U. S. 8, 1903; *Cimiotti Unhairing Co. v. American Fur Refining Co.,* 198 U. S. 399, 1905.

GRANT OF PETITIONER'S-DEFENDANT'S PATENT NO. 1,575,647 (R. p. 156), CREATES A PRESUMPTION THAT THERE WAS A SUBSTANTIAL DIFFERENCE BETWEEN PETITIONERS' AND RESPONDENT'S LATCH.

At this point we desire to call attention to a rule of law, as enunciated by this Court, to the effect that where a defendant justifies under a patent, as defendant (petitioner) does here, the issuance of such patent to it, raises a presumption in its favor, a presumption that there are clear structural differences and that it has *prima facie*, a right to manufacture or use its own patented device, as well as the plaintiffs have a right to manufacture theirs. This is particularly so where the patent under which petitioner (defendant) operates is obviously not an improvement upon (plaintiffs') respondents' patented machine, does not obviously take plaintiffs' machine as a foundation and starting point, but, as here, is an improvement upon the expired Dent, Keil and Charles patents. This rule is so well established that we deem it unnecessary to do more than cite some of the cases wherein it was applied, such as: *Corning v. Burden*, 15 How. 271; *Miller v. Eagle Mfg. Co.*, 151 U. S. 208; *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 261; *Kokomo v. Kitselman*, 189 U. S. 8.

In view of the above decisions, we are entitled to insist that weight should be given to the fact that defendant's device is also patented. The claims of the Schrader patent No. 1, 575,647 (R. p. 158), under which petitioner justifies, make it evident that the Patent Office has allowed broad claims exactly descriptive of defendant's structure and this notwithstanding the existence of plaintiffs' patent. We, therefore, ask that the Court give defendant the benefit of this presumption which the Supreme Court in the above cited cases says a defendant is entitled to.

The subject-matter of the two following captions relating to certain mechanical items is possibly unnecessary in view of our previous discussion, but in case the Court might

care to consider these, we will briefly refer to one of the principal prior art patents to Keil and to petitioners' Schrader patent, under which petitioner justifies and which was given full consideration by Judge Dickinson near the bottom of page 672, 20 Fed. 2d, but which seems to have been ignored entirely by the Court of Appeals for the Seventh Circuit.

KEIL PATENT NO. 554,448, February 11, 1896 (R. p. 88).

Keil shows a latch lever 7 having arms 4 and 5 which will automatically lock when the door is slammed when said lever stands in a horizontal or vertical position. Keil's statement of invention lines 9 to 24, page 1 of the Keil patent is just readable on the plaintiff's contrivance as on Keil.

> "This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction, to start or 'pry' the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely tight closure.
>
> The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide."

In Keil the keeper is mounted on the door casing and the latch lever 7 is mounted on the door just as in plaintiffs' patent. If any broad construction is attempted to be given plaintiffs' patent as being for a latch lever which will trip and lock in a vertical or horizontal position plus a co-acting keeper, it is manifest that such construction is present in the Keil patent which has been public property ever since the year 1913.

In the plate facing this page, we have reproduced the Keil patent drawings with the latch lever 7 colored red, the arms 4 and 5 colored green and the keeper 8 yellow; Keil's yellow keeper 8 is mounted on the door casing and the red latch lever 7 is pivotally mounted on the door between its ends precisely as in plaintiffs' patent. One end of Keil's lever is formed into an operating handle and the other into a keeper engaging green arm 5. Keil has a second green arm 4 projecting from the handle portion of the lever a short distance from its pivot. Keil's yellow keeper 8 is formed with an outer or inwardly inclined wall 9 for engagement with the respective green arms 5 and 4 when the lever is in horizontal or vertical positions respectively, as the door is closed, automatically to operate the lever, so that the arm 5 will engage under the keeper, when the door is entirely closed.

When Keil's red lever 7 is standing horizontal and the door carrying the lever is slammed shut, the pin 4 will engage the upper portion of the inclined wall 9 which will throw the lever 7 into the position seen in Fig. 4, then into the position seen in Fig. 3, and then into the locked position seen in Keil's Fig. 2. Hence, the Keil lever will lock when the door is slammed, no matter whether the lever is standing horizontal or vertical or in any intermediate positions. Keil's arms 4 and 5 are parallel, whereas plaintiffs' arms 12 and 9 are at right angles to each other, but the record and the patent are silent as to any different or improved function or result being attained by plaintiffs' right-angled arm contrivance over Keil's parallel arm arrangement.

The ultimate function of the arms in both the Keil and Winters & Crampton structures is identical, to wit, to effect a tripping of the latch lever by the co-action of the arms with the keeper, no matter whether said latch lever stands horizontal or vertical.

PETITIONER'S (DEFENDANT'S) DEVICE.

The defendant's device which has been held **not to infringe** in the Third Circuit and to infringe in the Seventh

H. F. KEIL.

LATCH.

Patented Feb. 11, 1896.

Fig. 1.

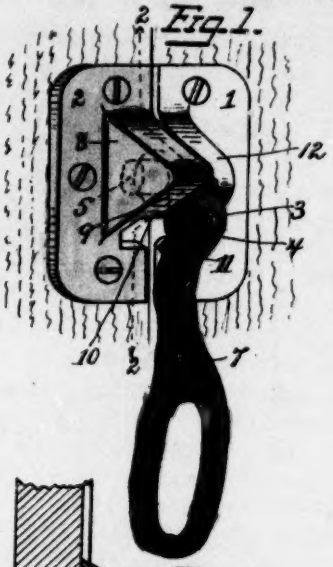


Fig. 6.

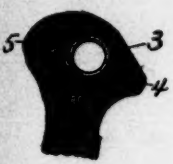


Fig. 5.

Fig. 2.

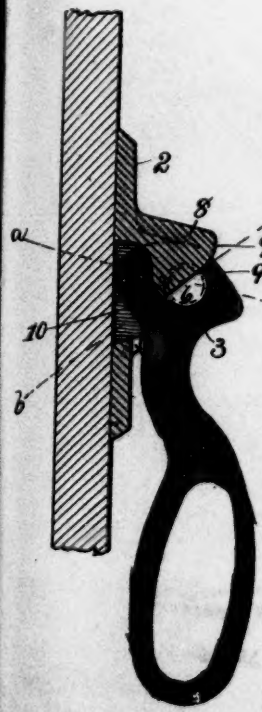


Fig. 3.

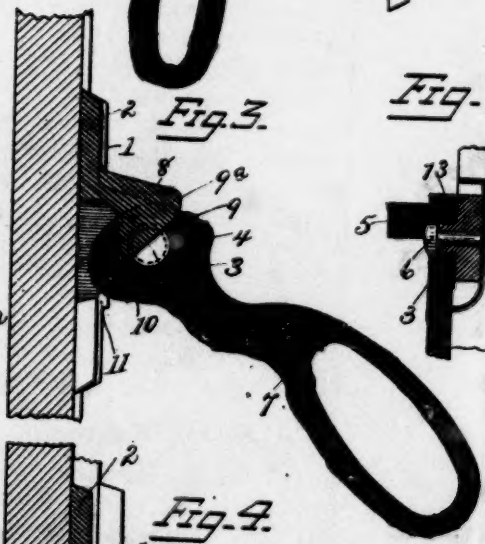
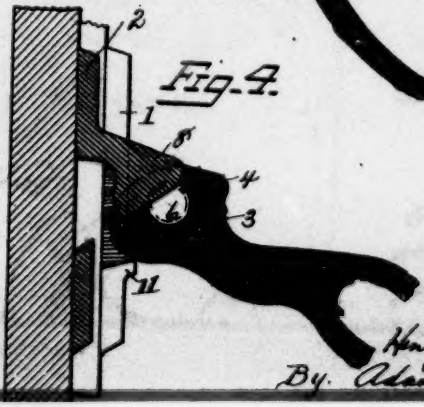


Fig. 7.

Fig. 4.



WITNESSES.

Albert Popking.

INVENTOR.

Henry F. Keil

By. Adam E. Sibert

March 9, 1926. 1,575,647

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

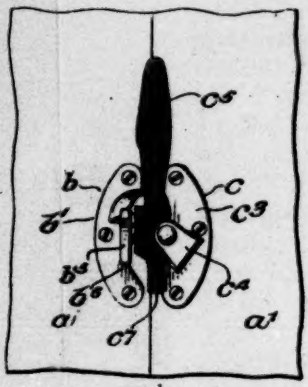


Fig. 1.

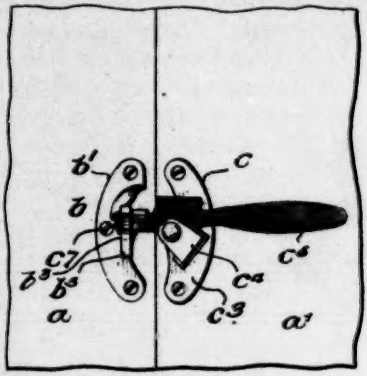


Fig. 2.

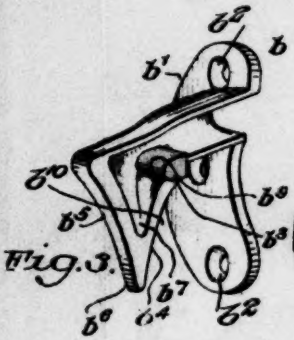


Fig. 3.

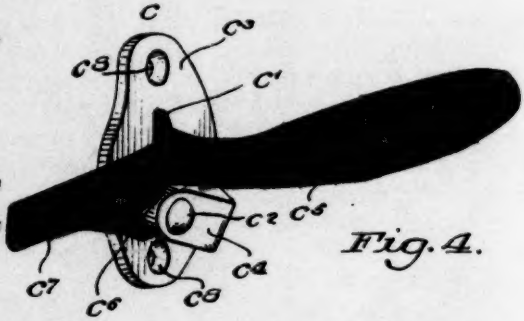


Fig. 4.

Fig. 5.

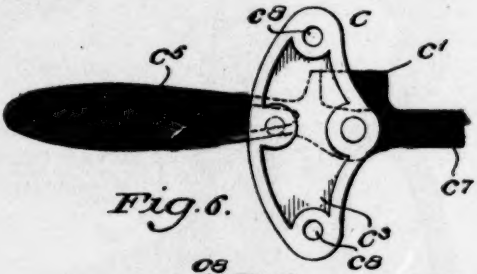


Fig. 6.

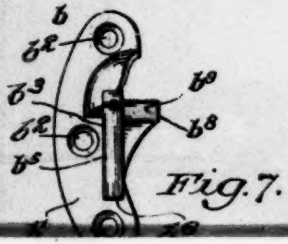


Fig. 7.

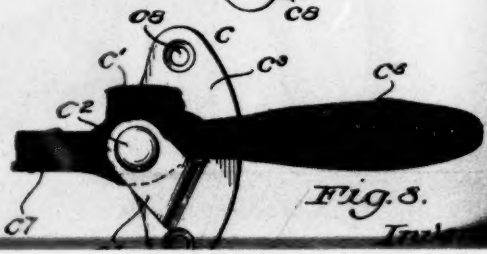


Fig. 8.

Circuit is constructed as seen in defendant's Schrader patent No. 1,575,647 (R. p. 156), and comprises a keeper of an entirely different construction and a latch lever of an entirely different character from the plaintiffs'. The plaintiffs' keeper, as we have explained, is old. The top edge of the plaintiffs' keeper trips the plaintiffs' latch when standing vertical. The top edge of defendant's keeper has no function whatever. As seen in Fig. 3 of the defendant's patent No. 1,575,647, facing this page defendant's keeper has a lateral yellow pin b^8, which is adapted to contact with the cam c^1. (See Fig. 4 of defendant's patent). The upper edge of defendant's keeper has no co-action whatever with the latch. The defendant's lever has no arm corresponding to the right-angled arm 12 of the plaintiffs' patent 1,385,102. Instead, defendant has a curved obliquely arranged cam face c^1 which co-acts with the lateral pin or lug b^8 projecting from the inside wall of the keeper. While defendant's patent No. 1,575,647 was pending in the Patent Office, the Patent Examiner, with entire propriety, cited the plaintiffs' patent in suit No. 1,385,102. A disclaimer in defendant's patent was accordingly inserted, at the bottom of page 2, lines 57 to 74, of defendant's patent, reading as follows:

> "I am aware of Patent No. 1,385,102, dated July 10, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which co-acts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate b^3 has no function, but the pivotal latch c^6 carries a cam c^1 inclined to the pivot of said latch and adapted to co-act with a pin b^8 carried by and laterally projecting from the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim." (R. bottom of p. 158.)

It, therefore, clearly appears that the Patent Office was fully appreciative of the fact that petitioner's construction

was structurally and functionally different from respondent's patent and structure and petitioner's patent was accordingly allowed.

CONCLUSION.

We do not understand that we are called upon or expected by the Court, at this time, to go into any extended discussion of the record. We understand it to be our privilege and duty only at this time to point out to the Court such salient facts and conditions present without contention in this record, upon which this Court can easily see without going into the record as to those matters, that a sufficient ground exists on the part of petitioner for the granting of the writ of certiorari as prayed in its behalf, and to this end we have briefly marshalled in crystallized form our principal several points relied upon, and briefly our reasons therefor. It is therefore submitted,

First, that there is a diversity of opinion between the Federal Courts of the Seventh and Third Circuits;

Second, that the seeming violation by the Court of Appeals for the Seventh Circuit of the decisions of this Court as to the scope to be given the claims of respondents' narrow, limited, secondary patent render the grant of the writ of certiorari peculiarly proper in the interest of substantial justice and for final settlement of what scope is to be given to said claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent for the remainder of its term throughout the United States and the Territories thereof.

It is, therefore, earnestly believed that this case is one which the writ of certiorari should issue.

Respectfully submitted,

E. HAYWARD FAIRBANKS,

Counsel for Petitioner.